

Appeal from decision of the Eastern States Office, Bureau of Land Management, rejecting oil and gas lease application ES 26802.

Reversed and remanded.

1. Oil and Gas Leases: Applications: Description -- Oil and Gas Leases: Applications: 640-Acre Limitation -- Oil and Gas Leases: Lands Subject to

It is proper to file an oil and gas lease offer for less than 640 acres of land where none of the land adjacent to the parcels described in the application is available for leasing.

APPEARANCES: Dayton F. Hale, pro se.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

Dayton F. Hale has appealed from the June 25, 1982, decision of the Eastern States Office, Bureau of Land Management (BLM), rejecting over-the-counter oil and gas lease offer ES 26802 because of appellant's "failure to apply for available adjacent lands on an application of less than 640 acres." Departmental regulation 43 CFR 3110.1-3(a) provides that "[n]o offer may be made for less than 640 acres except * * * where the land is surrounded by lands not available for leasing under the Act."

[1] In his statement of reasons, appellant states that it was his intention to file on all available lands in the respective sections of his offer, as well as lands contiguous thereto, and that a status map indicated no other Federal mineral lands available for leasing in the respective section encompassed in his offer. The title report worksheet indicates that appellant's offer for less than 640 acres was rejected because appellant failed to apply for the SE 1/4 SE 1/4, sec. 27, T. 1 S., R. 3 E., Huntsville meridian, Alabama, which is adjacent to a parcel described in appellant's application. However, the SE 1/4 SE 1/4 was patented with no reservation of minerals. Thus, it is not available for leasing, and appellant was not required to apply for it. It is proper to file an oil and gas lease offer for less than 640 acres where none of the land adjacent to the parcels

described in the offer is available for leasing. It follows that BLM improperly rejected appellant's application. 1/

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is reversed and the case remanded for further action consistent with this opinion.

Edward W. Stuebing
Administrative Judge

We concur:

Bruce R. Harris
Administrative Judge

James L. Burski
Administrative Judge

1/ In any event, even had the SE 1/4 SE 1/4, sec. 27 been patented with a mineral reservation, BLM improperly rejected the entire application. Under the 640-acre rule only those lands which are adjacent to available lands are excludable. See Gulf Oil Corp., 69 I.D. 30 (1962); Arapahoe Oil Co., A-28842 (Sept. 14, 1962). Thus, the only lands which were properly rejected would have been NE 1/4 SE 1/4, sec. 27.